



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (June 2004)

(Implements RCW 34.05.310)

Do NOT use for expedited rule making

Agency: Department of Ecology

AO# 06-10

Subject of possible rule making: Ecology is initiating rulemaking to amend the Model Toxics Control Act (MTCA) Cleanup Regulation (Chapter 173-340 WAC). The purpose of the rulemaking is to clarify the policies and procedures for establishing cleanup levels for mixtures of polychlorinated dibenzo-p-dioxins/polychlorinated dibenzofurans (dioxins/furans), polycyclic aromatic hydrocarbons (PAHs) and polychlorinated biphenyls (PCBs).

Statutes authorizing the agency to adopt rules on this subject: RCW 70.105D.030(2)

Reasons why rules on this subject may be needed and what they might accomplish: Ecology has concluded that rule revisions are necessary to clarify previous rule interpretations and policy decisions. As background, the Environmental Protection Agency (EPA) has established a methodology for evaluating dioxin and furans using Toxicity Equivalency Factors (TEFs). The current MTCA Cleanup Regulation specifies that cleanup proponents may use the EPA methodology when establishing cleanup levels for mixtures of dioxin/furans. After publishing the rule amendments, Ecology prepared guidance materials describing how the EPA methodology should be used to establish cleanup levels. In November 2005, the Rayonier Corporation filed a lawsuit challenging Ecology's application of the guidance to the cleanup of a former pulp mill site in Port Angeles. The lawsuit identified an ambiguity in the state's cleanup standards in terms of their application to mixtures of dioxins and furans and the use of the TEF methodology. Similar interpretation issues may exist for PAH and PCB mixtures. Ecology has concluded that amending the rule to clarify policy decisions is preferable to repeatedly resolving this issue on a site-specific basis.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: Establishing state cleanup levels is a unique responsibility assigned to the Department of Ecology in Chapter 70.105D RCW. The Environmental Protection Agency is responsible for overseeing cleanup actions conducted under the federal Superfund program and will be consulted during the rulemaking process. The Washington Department of Health and the Agency for Toxic Substances and Disease Registry (ATSDR) are responsible for evaluating human health hazards at contaminated sites and will be consulted during the rulemaking process.

Process for developing new rule (check all that apply): This rulemaking process will result in an amendment to an existing rule. The public will have an opportunity to comment on the proposed rule. At least two public hearings will be conducted. Additionally, the proposed amendments will be posted on the Ecology web site and provided to parties that have previously identified themselves as interested parties.

- ☐ Negotiated rule making
- ☐ Pilot rule making
- ☐ Agency study
- ☒ Other (describe)

How interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication:

Interested parties can participate in the decision to adopt the rule amendments and formulation of the proposed rule before publication. Information on the planned rulemaking and the public review and comment opportunities will be maintained on Ecology's web site at <http://www.ecy.wa.gov/programs/tcp/cleanup.html>. Information can also be obtained by contacting Dan Koroma, Department of Ecology, Toxics Cleanup Program, P.O. Box 47600, Olympia, WA 98504-7600, e-mail dkor461@ecy.wa.gov, phone (360) 407-7187, fax (360) 407-6426.

DATE

June 5, 2006

NAME (TYPE OR PRINT)

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SIGNATURE

TITLE

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